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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-198352

DATE: June 22, 1981

Exclusion of to
MATTER OF: Payment of Northern Paiute descendant] excluded from participation in distribution of judgment funds

DIGEST: Descendant of Northern Paiute Nation, who was inadvertently omitted from payment roll when funds appropriated in satisfaction of judgment in favor of Nation by Indian Claims Commission were distributed, may not be paid sum equivalent to his share of judgment from funds appropriated for aid to tribal government. Congress specifically appropriated funds to pay that award and no other funds appropriated to the Department of the Interior are available for that purpose. The claim is being referred to the Department of Justice with the recommendation that it settle the claim to avoid imminent litigation.

This action is in response to a request for an advance decision by the Authorized Certifying Officer of the Phoenix Area Office, Bureau of Indian Affairs (BIA), as to whether funds appropriated for aid to tribal governments may be distributed to a Northern Paiute descendant who was inadvertently omitted from the payment roll when funds appropriated in satisfaction of a judgment by the Indian Claims Commission in favor of the Northern Paiute Nation were distributed. Because Congress has already appropriated funds for payment of the judgment, and these funds have been distributed in their entirety, we conclude that the use of other funds, appropriated for another purpose, is impermissible.

The factual circumstances from which this claim arises are as follows. The Indian Claims Commission awarded the Northern Paiute Nation three judgments as compensation for land under Docket 87. The first award, for \$3,650,000, was rendered in favor of the Snake or Paiute Indians of the Oregon area on July 3, 1961. See House Document No. 229, 87th Congress, p. 19. A second award of \$935,000, for and on behalf of the Monos or Paiutes of Owens Valley, and a third of \$15,790,000, for and on behalf of the Paviotso or Paiutes of Western Nevada, were made on November 4, 1965. See House Document No. 393, 90th Congress, p. 48. Congress appropriated funds by the Act of September 30, 1961 (75 Stat. 733) to satisfy the first judgment, and by the Act of October 21, 1968 (82 Stat. 1190) to satisfy the latter two. A plan for the use and distribution of the funds was prepared by the Secretary of the Interior and submitted, with a letter dated July 18, 1974, to the Congress, as required by the Act of October 19, 1973 (Pub. L. No. 93-134, 87 Stat. 466), codified at 25 U.S.C. § 1402.

[Claim Resulting From Inadvertent Omission In Payment of Judgment]

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The Congressional Record recorded receipt of the plan by the House of Representatives on July 22, 1974, and by the Senate on July 23, 1974. Since neither House adopted a resolution disapproving the plan, it became effective at the end of a 60 day period, on October 10, 1974, as provided in Pub. L. No. 93-134, § 5, 87 Stat. 468, codified at 25 U.S.C. § 1405.

The plan provided as follows:

"The funds appropriated by the Acts of September 30, 1961 (75 Stat. 733), and October 21, 1968 (82 Stat. 1190), in satisfaction of the judgments granted to the Northern Paiute Nation in Docket 87 before the Indian Claims Commission, including all interest accrued, less attorney fees and litigation expenses, shall be used and distributed as herein provided:

"The Secretary of the Interior (hereinafter 'Secretary') shall make a per capita distribution, subsequent to preparing and approving a Northern Paiute descendant roll, of the totality of the judgment fund principal and its accrued interest, in a sum as equal as possible to each eligible Northern Paiute descendant born on or prior to and living on the approval date of this plan. * * *"
39 Fed. Reg. 43,412 (1974).

On April 17, 1980, the Phoenix Area Office of the Bureau of Indian Affairs distributed \$46,782,773.24 (the sum originally appropriated plus interest, less attorney fees and litigation expenses) to 9,062 descendants. The record indicates that 8,523 individuals received \$5,162.52 and the remaining 539 were paid \$5,162.53.

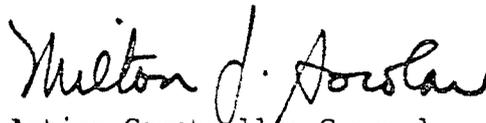
Subsequent to the distribution, the Bureau of Indian Affairs learned that five persons entitled to share in the distribution had been "inadvertently" left off the payment roll. According to the BIA, these individuals had initially been denied participation in the award because they had not demonstrated Northern Paiute descendency. The five appealed that rejection, and the Commissioner of Indian Affairs sustained their appeals in August 1979, and reiterated that action in March 1980. The BIA states that the five names were nevertheless omitted from the payment roll through an administrative error "because of the fact that well over 3,000 appeals had to be decided upon and considering the length of time required to settle the above five cases."

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By letter dated June 25, 1980, the BIA requested our favorable consideration of its plan to use appropriated funds to pay four of the descendants. (The fifth individual was to be paid with funds which had been recovered from a party who had received double payment in the April 17 distribution.) By letter dated September 3, 1980, the BIA amended its original request for use of appropriated funds. The September letter indicated that money had been recovered from three additional individuals who had received double payments in the distribution and that these funds, plus the previously noted refund, had been used to pay four of the five descendants who had been omitted from the payment roll. The BIA therefore requested that it be permitted to use \$5,162.52 plus accrued interest in appropriated funds to pay the heirs of the remaining individual, Vernon Alvin Reibach.

It is quite clear that the Bureau of Indian Affairs request must be denied. The Indian Claims Commission awarded a specific sum of money to the Northern Paiute Nation as compensation for its land, and Congress appropriated precisely that sum. These funds have been distributed in their entirety. Accordingly, we conclude that Congress having specifically appropriated set amounts to settle these claims, no other funds appropriated to the Department of the Interior, including those for aid to tribal governments, may be used to pay a descendant who was inadvertently excluded from participation in the distribution of judgment funds.

We note, however, that the claimant's attorneys have indicated their intention to litigate this matter if this Office does not reach a favorable decision. In our view, the claimant would be clearly entitled to an award had not the appropriation been exhausted. In view of the strong possibility of his prevailing in litigation, we are referring this claim to the Department of Justice with the recommendation that it consider entering into a compromise settlement of the claim as provided for by 28 U.S.C. § 2414.



Acting Comptroller General
of the United States